STATE OF MICHIGAN

COURT OF APPEALS

WELLNESS PLAN, Petitioner-Appellee,	UNPUBLISHED April 14, 2011
v	No. 294988 Tax Tribunal
CITY OF OAK PARK, Respondent-Appellant.	LC No. 00-345600

Before: SERVITTO, P.J., and GLEICHER and SHAPIRO, JJ.

PER CURIAM.

This action involves petitioner Wellness Plan's endeavor to obtain a real and personal property tax exemption from respondent City of Oak Park, as a Federally Qualified Health Center (FQHC) pursuant to MCL 211.7jj. Respondent appeals as of right a Michigan Tax Tribunal order granting petitioner's motion for summary disposition under MCR 2.116(C)(10). The tax tribunal ruled that petitioner, which possessed federal certification as a FQHC look-alike (look-alike), "meets the requirements outlined in 42 USC 1396d(*l*)(2)(B)(iii) for a FQHC and, as such, is exempt from property taxes under MCL 211.7jj." We affirm.

Absent fraud, we limit our review of a tax tribunal ruling to ascertaining whether the tribunal erred in applying the law or adopted an incorrect legal principle. *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006). The parties' dispute in this case turns on the proper construction and application of statutes, legal questions that we consider de novo. *Id*.

I. TAX EXEMPTIONS UNDER MICHIGAN LAW

An entity seeking a tax exemption bears the burden to prove its entitlement to the exemption. "Tax exemptions are in derogation of the principle that all shall bear a proportionate share of the tax burden, and therefore, a tax exemption shall be strictly construed." *GMAC, LLC v Dep't of Treasury*, 286 Mich App 365, 375; 781 NW2d 310 (2009). The following pertinent rules of construction govern the applicability of tax exemptions:

> "An intention on the part of the legislature to grant an exemption from the taxing power of the State will never be implied from language which will admit of any other reasonable construction. Such an intention must be expressed in clear and unmistakable terms, or must appear by necessary implication from the

> language used, for it is a well-settled principle that, when a specific privilege or exemption is claimed under a statute, . . . it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. . . . [S]ince taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant." [*GMAC*, 286 Mich App at 375, quoting *Detroit v Detroit Commercial College*, 322 Mich 142, 148-149; 33 NW2d 737 (1948), quoting 2 Cooley, Taxation (4th ed), § 672, p 1403.]

Accordingly, for petitioner to succeed, it must show that the Legislature clearly and unambiguously intended to grant an exemption. *Guardian Indus Corp v Dep't of Treasury*, 243 Mich App 244, 249-250; 621 NW2d 450 (2000).

II. MICHIGAN'S TAX EXEMPTION FOR FQHC'S

The Michigan Legislature has awarded FQHC's an explicit exemption from real and personal property taxes in MCL 211.7jj: "[R]eal and personal property of a federally-qualified health center is exempt from the collection of taxes under this act. As used in this section, 'federally-qualified health center' means that term as defined in section 1396d(*l*)(2)(B) of the social security act, 42 USC 1396d." The Legislature's reference to 42 USC 1396d plainly signals that the federal statute controls which entities qualify for the FQHC exemption. The federal statute, 42 USC 1396d(*l*)(2)(B), defines an FQHC in relevant part as follows:

> (B) The term "Federally-qualified health center" means an entity which—
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> (i) is receiving a grant under section 254b of this title,
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> (ii) (I) is receiving funding from such a grant under a contract with the recipient of such a grant, and (II) meets the requirements to receive a grant under section 254b of this title,
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> (iii) *based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary to meet the requirements for receiving such a grant*, including requirements of the Secretary that an entity may not be owned, controlled, or operated by another entity, or,
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> (iv) was treated by the Secretary, for purposes of part B of subchapter XVIII of this chapter, as a comprehensive Federally funded health center as of January 1, 1990 . . . . [Emphasis added.]

Petitioner insists that it meets the definition set forth in subsection (B)(iii). Thus, for petitioner to prove that it constitutes a FQHC as delineated in subsection (B)(iii), it must establish that, "based on the recommendation of the Health Resources and Services Administration within the Public Health Service," the Secretary has determined that petitioner meets the requirements for receiving grants under 42 USC 254b.

Section 254b, which codifies § 330 of the Public Health Service Act, does not itself prescribe the requirements that entities must address and satisfy to become eligible to receive federal grants. Instead, the Health Resources and Services Administration (HRSA) reviews on a case-by-case basis applications from private and public nonprofit health care organizations that apply to receive "Section 330 funding." Although the HRSA website[1] makes clear that look-alikes do not receive § 330 funding, the HRSA also instructs that "FQHC Look-Alikes *must meet the same program requirements as FQHCs that receive Section 330 funding* and are eligible for the same benefits." (Emphasis added). This declaration reflects that both FQHC's and look-alikes are indistinguishable with respect to the requirements they must satisfy, and that FQHC's and look-alikes are distinguishable only to the extent of the federal benefits they actually receive. Stated differently, look-alikes meet the applicable mandates for receiving § 330 grants, even though look-alikes do not actually receive § 330 grant money. Unlike 42 USC 1396d(*l*)(2)(B)(i), which defines a FQHC as an entity that actually "is receiving a grant," subsection (B)(iii) only contemplates that the entity must "meet the requirements for receiving such a grant," i.e., the entity need not actually receive a grant.

III. DEFERENCE TO HRSA INTERPRETATIONS & GUIDELINES

We reject respondent's contention that the tax tribunal improperly relied on HRSA documents, guidelines, or interpretations to determine whether look-alikes qualify as FQHC's under 42 USC 1396d. The terminology comprising 42 USC 1396d(*l*)(2)(B)(iii) expressly recognizes, or at a minimum strongly suggests, that Congress has delegated or entrusted to the HRSA the authority to ascertain which entities qualify as FQHC's. A court reviewing a federal agency's interpretation of a statute administered by the agency must first consider "whether Congress has directly spoken to the precise question at issue." *Chevron, USA, Inc v Natural Resources Defense Council, Inc*, 467 US 837, 842; 104 S Ct 2778; 81 L Ed 2d 694 (1984). If the congressional intent appears clear, then the agency's statutory interpretation becomes irrelevant because "the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Id*. at 842-843. However, "if the statute is silent or ambiguous with respect to [Congress's intent concerning] the specific issue, the question for the court is whether the agency's" interpretation rests "on a permissible construction of the statute." *Id*. at 843. But when Congress "has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation." *Id*. at 843-

[1] Petitioner appended to its motion for summary disposition before the tax tribunal documentation retrieved from the HRSA website. See The Health Center Program: How to Apply, <http://bphc.hrsa.gov/about/apply.htm>, accessed April 1, 2011.

844. In summary, "[s]ometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." *Id.* at 844.[2]

In this case, 42 USC 1396d and the Social Security Act in general remain silent concerning the specific question whether look-alikes can be considered FQHCs. As we have observed, though, Congress did at least implicitly delegate authority to the HRSA in § 1396d(*l*)(2)(B)(iii) to decide which entities meet the prerequisites for a grant under 42 USC 254b, so as to be considered a FQHC. Because Congress has delegated authority to the HRSA to make FQHC determinations in conformity with § 1396d(*l*)(2)(B)(iii), we conclude that, under *Chevron* principles, we should afford deference to the HRSA's interpretation of FQHC requirements.

The HRSA has published application guidelines and information for entities seeking to qualify as a FQHC or look-alike, including the following pertinent summary of health center types:

> **Grant-Supported Federally Qualified Health Centers** are public and private non-profit health care organizations that meet certain criteria under the Medicare and Medicaid Programs . . . of the Social Security Act and receive funds under the Health Center Program (Section 330 of the Public Health Service Act).
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> * * *
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> **Federally Qualified Health Center Look-Alikes** are health centers that have been identified by HRSA and certified by the Centers for Medicare and Medicaid Services as *meeting the definition of "health center" under Section 330 of the PHS Act, although they do not receive grant funding under Section 330*. [Emphasis added.][3]

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[2] Although the Michigan Supreme Court has specifically declined to adopt the *Chevron* deference analysis for review of *state* administrative agencies' statutory interpretations, *In re Complaint of Rovas*, 482 Mich 90, 111; 754 NW2d 259 (2008), the issue whether petitioner is considered a FQHC under 42 USC 1396d(*l*)(2)(B)(iii) is a question of federal law, and is properly analyzed under the principles described in *Chevron*. *State Treasurer v Abbott*, 468 Mich 143, 148; 660 NW2d 714 (2003).

[3] A more recent official HRSA publication regarding look-alike guidelines and applications similarly defines look-alikes as FQHC's:

> One of the definitions of an FQHC as set forth in ... section 1905(*l*)(2)(B) of the SSA is an entity, which based on the recommendation of the Health Resources and Services Administration (HRSA), is determined to meet the

This language corresponds to the language Congress employed in 42 USC 1396d(*l*)(2)(B)(iii), the subsection petitioner claims invests it with FQHC status. In the HRSA's view, an entity that meets the requirements of 42 USC 1396d(*l*)(2)(B)(iii) is defined as a look-alike, then the converse also appears true: a FQHC look-alike is an entity that meets the definition of 42 USC 1396d(*l*)(2)(B)(iii).

In summary, under the HRSA interpretation, a FQHC look-alike meets the definition of a FQHC, and we defer to this interpretation by the agency that Congress has entrusted to decide FQHC eligibility in 42 USC 1396d(l)(2)(B)(iii). *Chevron*, 467 US at 844. Because petitioner, a look-alike, falls within the HRSA-defined category of FQHC's, we conclude that petitioner qualifies as a FQHC as defined in 42 USC 1396d, and plainly remains exempt from the collection of Michigan real and personal property taxes under MCL 211.7jj. The tax tribunal correctly granted petitioner summary disposition.

Affirmed.

/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher
/s/ Douglas B. Shapiro

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requirements of the grant program authorized by section 330 of the Public Health Service (PHS) Act (the Health Center Program), but does not receive a grant under section 330 of the PHS Act. This category of health centers has been labeled, "FQHC Look-Alikes." <http://bphc.hrsa.gov/policiesregulations/policies/pin200906.html>, accessed April 1, 2011.